

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of AT&T Communications of,)
Ohio, Inc.'s and TCG Ohio's Petition for Arbi-)
tration of Interconnection Rates, Terms, and) Case No. 00-1188-TP-ARB
Conditions and Related Arrangements with)
Ameritech Ohio.)

ARBITRATION AWARD

The Commission, considering the petition, the evidence of record, the arbitration Panel report along with the exceptions and replies thereto, and being otherwise fully advised, hereby issues its arbitration award.

APPEARANCES:

AT&T Communications of Ohio, Inc. and TCG Ohio, by David J. Chorzempa, Clark M. Stalker, and John J. Reidy III, 222 W. Adams Street, Suite 1500, Chicago, IL 60606, and Vorys, Sater, Seymour and Pease LLP, by Benita Kahn, 52 East Gay Street, P.O. Box 1008, Columbus, Ohio 43216-1008, on behalf of AT&T Communications of Ohio, Inc.

Porter, Wright, Morris & Arthur, by Daniel R. Conway and Mark Stemm, 41 South High Street, Columbus, Ohio 43215; Mayer, Brown & Platt, by Michael T. Sullivan, Theodore A. Livingston, Christian F. Binnig, and Gary S. Feinerman, 190 S. LaSalle Street, Chicago, Illinois, 60603; and Michael T. Mulcahy, on behalf of Ameritech Ohio.

Arbitration Award

I. Background

AT&T Communications of Ohio, Inc. and TCG Ohio¹ (hereafter, jointly AT&T) entered into respective interconnection agreements with Ameritech Ohio (herein, Ameritech) effective February 20, 1997, pursuant to Case No. 96-752-TP-ARB, *In the Matter of the AT&T Communications of Ohio, Inc.'s Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with The Ohio Bell Telephone Company dba Ameritech Ohio*, and effective on April 24, 1997, pursuant to Case No. 96-694-TP-ARB, *In the Matter of the Petition of TCG Cleveland for Arbitration of Open Issues Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Ohio*. Subsequently, per agreement effective February 29, 2000, the parties agreed that the existing interconnection agreements between the parties should remain in effect pending approval by the Commission of a successor agreement. On January 25, 2000, AT&T

¹ AT&T Communications of Ohio, Inc. and TCG Ohio are both subsidiaries of AT&T Corp.

requires Ameritech to provide AT&T with SS7 link diversity without expressly exempting situations where Ameritech does not provide diversity to itself.

In reply, AT&T requests that the Commission reject Ameritech's exception and affirm the Panel's recommendation on this issue. AT&T states that Ameritech is ignoring the Panel's rationale that the issue is of service quality and not "superior quality". AT&T contends that in light of the fact that Ameritech had agreed to provide a particular level of service in a prior agreement, it should not now be able to lower the level of service and claim that it can do so because it was of superior quality.

(c) Commission Award

We find that Ameritech has provided no new arguments in its exceptions that would persuade us to reject the Panel's recommendation. We agree with the Panel's determination that this issue appears to be one of service quality and not superior quality. Therefore, we order the parties to incorporate language in the interconnection agreement consistent with this finding.

35. Issue 83:

Under what circumstances is Ameritech required to provide xDSL-capable loops?

(a) Panel Recommendation

The Panel believes that Ameritech's proposed Facilities Modification and Construction Policy (FMOD) process addresses those circumstances and concerns raised by AT&T. The Panel further agreed that Ameritech's FMOD process should reduce those situations in which AT&T will not be able to provide service because of facilities not being available. The Panel also pointed out that Ameritech's FMOD proposal has been a topic of the Ameritech's OSS Collaborative, in which many of the issues surrounding Ameritech's proposal have been resolved and agreed to in the context of 00-942. The remaining unresolved issues relate to pricing and the allowable charges for new construction. The Panel, therefore, recommended that the Commission require the parties to incorporate Ameritech's FMOD policy, as agreed to in the OSS Collaborative into its interconnection agreement. For those currently unresolved cost and pricing issues, the Panel recommended that the parties defer to the outcome of the 96-922 and 00-942 proceedings and that in the interim, the Commission should set prices consistent with Ameritech's provisioning of facilities to its own retail customers.

(b) Exceptions

Ameritech takes exception to the Panel's recommendation that the interconnection agreement resulting in this case should incorporate its FMOD policy, as agreed to in the OSS Collaborative. First, Ameritech argues that, whereas the current case is arbitration is conducted pursuant to the 1996 Act, the FMOD policy is an agreement made outside of the 1996 Act that imposes certain obligations that exceed the requirements of the 1996 Act. Secondly, Ameritech argues there is no record evidence in this proceeding to support the imposition of the FMOD policy on Ameritech, or to conclude that these obligations are

lawful or desirable. Further, Ameritech objects to the Panel's recommendation that interim prices for modifications be consistent with retail pricing. Lastly, Ameritech argues that there is no basis for retail pricing for DSL loops because Ameritech does not provide DSL loops or stand-alone loops to retail customers.

AT&T supports the Panel's recommendation that issues related to Ameritech's FMOD policy should be determined in the context of the OSS collaborative in the 00-942. AT&T further agrees with the Panel's recommendation that the FMOD policy should be relied upon on an interim basis, pending the outcome of the 00-942 case. AT&T also points out that certain pricing of loop conditioning issues are being addressed by the Commission in the 96-922 TELRIC proceeding. AT&T avers that although it did not "win" this issue, it found the Panel's recommendation to be an acceptable middle ground. Lastly, AT&T expects that the results of the TELRIC proceeding would also be incorporated into its interconnection agreement with Ameritech.

(c) Commission Award

The Commission finds that Panel's recommendation simply agrees to incorporate Ameritech's own policy, as was agreed to in the industry collaborative. In regard to FMOD policy itself, we find that in most circumstances, when the industry is able to resolve and stipulate to solutions involving highly technical matters such as these, we are more than happy to accommodate the industry rather than addressing matters through a lengthy hearing proceeding. Regardless of whether we approve of Ameritech's FMOD policy separate and apart of the 00-942 OSS docket or within that docket, we find the FMOD policy, in general, to be reasonable. We also find it to be preferable, where possible, to have a uniform Ameritech policy, rather than a number of outcomes resulting from individual arbitration cases. In regard to the Panel's recommendation for setting interim prices, by establishing that the charges which Ameritech applies to AT&T for facilities modification are equal to the charges that Ameritech charges to its own end users that require facilities to be modified, we believe that the Panel's recommendation will assist in reducing the potential that Ameritech will discriminate against AT&T. In addition, in the case of xDSL loops, further protection will be provided by requiring that Ameritech charge AT&T established TELRIC rates and a Commission approved line conditioning rate for that unbundled DSL, with the possibility of out-of-the ordinary special construction charges if the loop is clearly outside the TELRIC criteria used to determine the average loop cost.

Therefore, we find that the Panel's recommendation, including its interim pricing solution, to be reasonable. We defer the outstanding unresolved issues to the 00-942 OSS and the 96-922 TELRIC proceeding. We also rule that any modifications or revisions to the FMOD policy or to pricing determinations arriving out of a subsequent Commission order should be incorporated into the parties' interconnection agreement.

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

- (1) AT&T and TCG's joint arbitration petition was filed on June 30, 2000, pursuant to Section 252(b) of the Act. On July 25, 2000, Ameritech filed its response to the arbitration petition.
- (2) On September 1, 2000, the parties timely filed their arbitration packages.
- (3) On September 11-14, 21 and 22, 2000, the arbitration hearing was held. Post-hearing briefs were submitted on October 4, 2000, in lieu of oral arguments before the Panel.
- (4) On March 19 and 30, 2001, the Panel filed its recommendations on the issues requiring arbitration.
- (5) On April 2, 2001, AT&T and Ameritech timely filed exceptions to the Panel report. On April 9, 2001, AT&T and Ameritech filed replies to the filed exceptions.
- (6) To the extent set forth in this arbitration award, we adopt the recommendations of the Panel as reasonable and just resolutions of the arbitration issues to which the parties took exception. All other Panel recommendations to which the parties did not take exception should be adopted as just and reasonable resolutions to those issues. Any exceptions raised that we did not specifically address herein are denied. Based upon the foregoing, AT&T and Ameritech should incorporate the directives set forth in this arbitration award within their interconnection agreement.

It is, therefore,

ORDERED, That AT&T, TCG and Ameritech incorporate the directives as set forth in this arbitration award within their interconnection agreement. It is, further,

ORDERED, That, on or before August 27, 2001, AT&T, TCG and Ameritech file in this docket their entire interconnection agreements for our review. If the parties are unable to agree upon entire interconnection agreements within this time frame, each party shall file for Commission review its version of the language that it believes should be used in a Commission-approved interconnection agreement. It is, further,

ORDERED, That, within ten days of the filing of the interconnection agreement, any party or other interested persons may file written comments supporting or opposing the proposed interconnection agreement and that any party or other interested persons may file responses to comments within five days thereafter. It is, further,

ORDERED, That any motions not expressly ruled upon in this arbitration award are denied. It is, further,

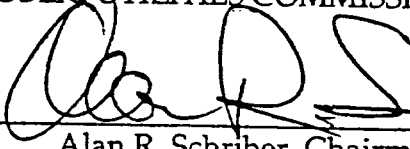
ORDERED, That nothing in this arbitration award shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That this arbitration award does not constitute state action for the purpose of the antitrust laws. It is not our intent to insulate either party to the contract from the provisions of any state or federal law that prohibits the restraint of trade. It is, further,

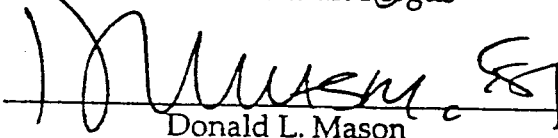
ORDERED, That this docket shall remain open until further order of the Commission. It is, further,

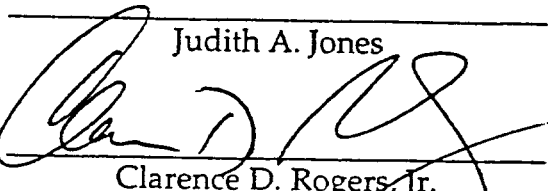
ORDERED, That a copy of this arbitration award be served upon AT&T, Ameritech, and any interested persons of record.

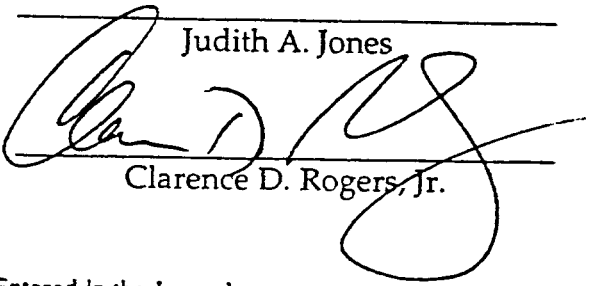
THE PUBLIC UTILITIES COMMISSION OF OHIO


Alan R. Schriber, Chairman


Ronda Hartman Fergus


Donald L. Mason


Judith A. Jones

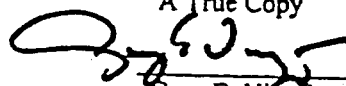

Clarence D. Rogers, Jr.

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Entered in the Journal

JUN 21 2001

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Gary E. Vigorito
Secretary